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PRC released guidelines for SCC filing



Cyberspace Administration of China (**CAC**) published the Filing Guidelines for the Standard Contract for Export of Personal Information (First Edition) ("**Guidelines**") on 30 May 2023.

According to the Guidelines, the filing of the Standard Contract for Export of Personal Information ("**SCC Filing**") should be made within 10 working days from the effective date of the SCC. Upon submission, CAC (via its branches at provincial level) will check the documents and notify the applicant whether it has passed the SCC Filing or not, which makes the SCC Filing more of an approval instead of a filing. If the applicant passes the SCC Filing, a filing number will be allocated by CAC. If the applicant fails the SCC Filing and is required to provide further documentation, it needs to make a supplemental application within 10 working days.

Except for the executed SCC and the Personal Information Protection Impact Assessment (**PIPIA**) report, the applicant needs to file the following documents:-

- (a) A photocopy of its unified social credit code certificate;
- (b) A photocopy of the identity document of its legal representative;

- (c) A photocopy of the identity document of the employee handling the filing application ("**Handler**");
- (d) Original power of attorney granted to the Handler (standard form);
- (e) Original commitment letter issued by the applicant (standard form).

The PIPIA report submitted for SCC Filing should be prepared **within 3 months** prior to the submission date and, once the PIPIA report has been issued, no material change can be made to the applicant's personal information export practice. The Guidelines also include a PIPIA report template (please refer to the Appendix for the full text), which sets out the structure and contents of a PIPIA report. We expect that CAC will require the applicant to follow the PIPIA report template strictly.

The SCC Filing can be amended during the term of the SCC and, if so, a supplemental submission should also be made. If a new SCC is entered into, a fresh filing shall be made with CAC. CAC will review a supplemental submission or a fresh filing within 15 working days of receipt? The following scenarios will trigger amendment to the SCC and update of the PIPIA report (and therefore, a supplemental submission or a fresh SCC Filing),

- (a) any change to the purpose, scope, category, sensitivity or method of the export of personal information, or the location of storage of the personal information, or the purpose or method of handling of personal information by the overseas recipient, or there is an extension of the period for the overseas storage of personal information;
- (b) any change to the laws, regulations or policies for personal information protection in the country or region where the overseas recipient is located which may have impact on the rights and interests in the personal information;
- (c) any other scenarios where the rights and interests in the personal information could be affected.

Although the Guidelines have been released, there are still various issues related to the SCC Filing that have not been answered, for example, whether the SCC could be entered by multiple entities collectively as one party, and whether the PIPIA report needs to be prepared for each entity of a group company. For a data exporter to proceed with an SCC Filing, a case by case consultation with CAC will still be necessary.

We do note that certain local CACs are publishing their own version of guidelines, to further clarify certain issues related to the SCC Filing. For example, in the guidelines issued by the Beijing branch of CAC, it is required that the applicant shall be a PRC entity executing the SCC and be a legal person (instead of a branch which does not constitute a legal person under PRC law), and where there are several legal persons under the same group company, the SCC Filing is allowed to be carried out by the group.

Appendix PIPIA report template

Personal Information Protection Impact Assessment Report (Template)

(For Export of Personal Information)

Name of the Personal Information Handler: (company chop affixed)

[day/month/year]

1. General description of the assessment

Describe the implementation of the assessment, including but not limited to the date of commencement and date of completion, the organising of the assessment and the process and method of implementation. Where there is any third-party institution involved in the assessment, also describe the basic information of the third-party institution and its involvement in the assessment. The official seal of the third-party institution should be affixed on the relevant page of this report.

2. Overall introduction of personal information export

Elaborate the basic information of the personal information Handler, the business and information system relevant to personal information export, the personal information to be exported, the capacity of the personal information handler to protect personal information, information of the overseas recipient, whether the personal information will be provided to any third party, how to ensure the implementation of the standard contractual clauses, etc., which shall include, without limitation:

- (a) Basic information of the personal information Handler
 - (i) Basic information of the entity or the individual;
 - (ii) Shareholding structure and information of the actual controller;
 - (iii) Organisational structure;
 - (iv) Information of the personal information protection institution/department;
 - (v) Description of the overall business and the personal information;
 - (vi) Domestic and overseas investment.
- (b) Information of the business and information system relevant to personal information export
 - (i) Basic information of the business relevant to personal information export;
 - (ii) Description of the collection and use of personal information by the business relevant to personal information export;
 - (iii) Description of the information system for the business relevant to personal information export;
 - (iv) Information about the data center (including cloud services) in respect of personal information export;
 - (v) Information related to the network path and links for the personal information export.
- (c) Information regarding the personal information to be exported
 - (i) Elaborate the purpose, scope and method of the handling of personal information by the personal information handler and the overseas recipient, and the legality, legitimacy and necessity of the same;
 - (ii) Elaborate the scale, scope, category and sensitivity of the Personal information to be exported, describe the handling of Sensitive Personal information and the use of Personal information for automatic decision-making;

- (iii) Set out the domestic system platform and data center where the personal information to be exported is currently stored, and the overseas system platform and data center where the said Personal information will be stored after being exported;
 - (iv) Description of any onward transfer after the export of Personal information.
- (d) Capacity of the personal information handler to protect personal information
 - (i) The personal information safety management capacity, including the formation of the management and organisation regime and the formulation of rules, management of the whole process, emergency response, the rules for the protection of the rights and interests in the personal information and other rules and their implementation;
 - (ii) The personal information safety technology capacity, including the security technical measures being taken in the whole process of handling (collection, storage, use, processing, transmission, provision, disclosure, deletion, etc.) of personal information;
 - (iii) Proof on the effectiveness of the personal information protection measures, e.g., certification of personal information protection, compliance audit of personal information protection, network security level protection assessment, etc.;
 - (iv) Information about compliance with the relevant laws and regulations on the protection of personal information.
- (e) Information of the overseas recipient
 - (i) Basic information of the overseas recipient;
 - (ii) Purpose and method of the handling of personal information by the overseas recipient;
 - (iii) Capacity of the overseas recipient to protect personal information;
 - (iv) Policies and regulations on the protection of personal information in the country or region where the overseas recipient is located;
 - (v) Description of the whole process of handling of personal information by the overseas recipient.
 - (vi) Other information that the personal information handler considers necessary to provide.

3. Impact assessment of the proposed export of personal information

Elaborate the impact assessment in respect of each of the following matters, highlighting the issues and potential risks identified in the assessment as well as the corresponding rectification measures being taken and the effect of the rectification.

- (a) The legality, legitimacy and necessity of the purpose, scope and method of the handling of personal information by the personal information handler and the overseas recipient;
- (b) The scale, scope, category and sensitivity of the personal information to be exported, and the risks to the rights and interests in the Personal information that may be caused by the export of personal information;

- (c) The obligations to be undertaken by the overseas recipient, and whether the management and technical measures and capabilities to perform the obligations can guarantee the security of the personal information to be exported;
- (d) The risk of the personal information being tampered with, destroyed, leaked, lost, illegally used, etc. after being exported, and whether the channels to safeguard the rights and interests in the personal information are unhindered;
- (e) The impact of the personal information protection policies and regulations in the country or region where the overseas recipient is located on the performance of the standard contract;
- (f) Other matters which may affect the security of the personal information export.

4. Conclusion of the impact assessment of personal information export

Make an objective conclusion on the impact assessment of the personal information export based the above impact assessment and the corresponding rectification, and elaborate the reasons and arguments for the conclusion being made.

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